

SUSMAN GODFREY L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

SUITE 3800

1201 THIRD AVENUE

SEATTLE, WASHINGTON 98101-3000

(206) 516-3880

FAX (206) 516-3883

WWW.SUSMANGODFREY.COM

SUITE 5100  
1000 LOUISIANA STREET  
HOUSTON, TEXAS 77002-5096  
(713) 651-9366

SUITE 5100  
901 MAIN STREET  
DALLAS, TEXAS 75202-3775  
(214) 754-1900

SUITE 950  
1901 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067-6029  
(310) 789-3100

15TH FLOOR  
560 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10022-6828  
(212) 336-8330

LINDSEY GODFREY ECCLES  
DIRECT DIAL (206) 516-3832

E-MAIL LECCLES@SUSMANGODFREY.COM

May 1, 2015

**VIA ECF**

The Honorable William H. Pauley III  
United States District Judge  
U.S. District Court  
Southern District of New York  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *The Dial Corporation, et al. v. News Corporation*, Civ. Action No. 1:13-cv-06802-WHP

Dear Judge Pauley:

We write jointly on behalf of all parties in the above-referenced matter to memorialize a stipulation and agreement (“Stipulation”) between the parties concerning the use of testimony given in prior lawsuits in this action. The Stipulation provides that in the event that this Court should find in some future ruling that Rule 32(a)(8) is inapplicable and that Plaintiffs therefore may not use the Prior Testimony in this action, Defendants will not object on timeliness grounds to Plaintiffs seeking, in advance of trial, to take depositions of any witnesses who gave Prior Testimony.

In light of the Court’s fact discovery deadline of May 1, 2015, the parties respectfully request that the Court So Order this stipulation and agreement, which is attached as Exhibit A to this letter.

We stand ready to discuss any questions the Court may have regarding this request.

Respectfully submitted,

By: /s/ Lindsey Godfrey Eccles  
Lindsey Godfrey Eccles  
SUSMAN GODFREY LLP  
1201 Third Avenue, Suite 3800  
Seattle, WA 98101-3000  
Telephone: (206) 516-3880  
Email: leccles@susmangodfrey.com  
*Attorneys for Plaintiffs*

By: /s/ Jane B. O’Brien  
Jane B. O’Brien  
PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
2001 K Street, N.W.  
Washington, DC 20006  
Telephone: (202) 223-7300  
Email: jobrien@paulweiss.com  
*Attorneys for Defendants*

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

THE DIAL CORPORATION,  
HENKEL CONSUMER GOODS INC.,  
H.J. HEINZ COMPANY,  
H.J. HEINZ COMPANY L.P.,  
FOSTER POULTRY FARMS,  
SMITHFIELD FOODS, INC.,  
HP HOOD LLC, BEF FOODS, INC.,  
SPECTRUM BRANDS, INC.

Individually and On Behalf of Similarly  
Situated Companies

Plaintiffs,

v.

NEWS CORPORATION,  
NEWS AMERICA INC.,  
NEWS AMERICA MARKETING FSI LLC  
NEWS AMERICA MARKETING IN-  
STORE SERVICES L.L.C. and  
Defendants.

Civil Action No. 13-CV-6802-WHP

**STIPULATION AND PROPOSED  
ORDER  
RE: PRIOR TESTIMONY**

WHEREAS the fact discovery deadline in this case is May 1, 2015;

WHEREAS the Court has adjourned sine die the deadline for the parties to file a Joint Pre-Trial Order (ECF No. 214);

WHEREAS certain individuals gave deposition and trial testimony in the following prior lawsuits against Defendants: *FloorGraphics v. News America Marketing In-Store Services, Inc.*, No. 04-cv-3500 (D.N.J.); *Insignia Systems, Inc. v. News America Marketing In-Store, Inc.*, No. 04-cv-4213 (D. Minn.); *Valassis Comm'cns, Inc. v. News America, Inc.*, 2:06-cv-10240 (E.D. Mich.) and No. 07-706645 (Wayne Ct. Cir. Ct., Mich.) (the "Prior Testimony"); and

WHEREAS the parties are in dispute as to whether the Prior Testimony falls under the provisions of Federal Rule of Civil Procedure 32(a)(8) and may be used in this action;

IT IS HEREBY STIPULATED AND AGREED by and between the parties that in the event that this Court should find in some future ruling that Rule 32(a)(8) is inapplicable and that Plaintiffs therefore may not use the Prior Testimony in this action, Defendants will not object on timeliness grounds to Plaintiffs seeking, in advance of trial, to take depositions of any witnesses who gave Prior Testimony. By this Stipulation Plaintiffs do not in any way concede that Rule 32(a)(8) is inapplicable.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Judge William H. Pauley III